IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9234 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAJESHBHAI NATVARLAL AGRAWAL & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Applicant(s) : 1 - 3.
MR MUKESH PATEL, APP for Respondent(s) : 1,
MR JASWANT K SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/09/2005

ORAL JUDGMENT

1.Rule. Mr. Mukesh Patel, learned Assistant Public Prosecutor waives service of rule on behalf of respondent No. 1 – State. Mr. J.K. Shah, learned advocate appearing for the respondent No. 2 waives service of rule on behalf of respondent No. 2. At the joint request of the parties, the matter is taken up for final hearing.

2.The present application is filed by the petitioners-original accused praying for quashing and setting aside the complaint filed by respondent No. 2 before the Mahidarpura Police Station being CR No. I-76 of 2005 on appropriate terms and conditions in the interest of justice.

3.Mr. Ashish M. Dagli, learned advocate appearing for the petitioners has submitted that the complaint came to be lodged being CR No. I-76 of 2005 before Mahidarpura Police Station for the offences punishable under Section 406, 420, 467, 468, 471 and 114 of I.P.C. by respondent No. 2, inter alia,

alleging that her husband Rajendrabhai Shah who was practicing as Sales Tax – Income Tax advocate passed away on 17.07.1998. It was further alleged that the administration of movable and immovable property of the family of the complainant was being looked after by the present petitioner No. 1 who was working as a Junior with the deceased Rajendrabhai. The office is situated near Royal House, Chhaparia Sheri, Mahidarpura and one key of the office was with the present petitioner No. 1. The petitioner No. 1 used to deal with all files of deceased Rajendrabhai and after his death, files were kept by petitioner No. 1. On demand for handing over the same, promises were made that the files were handed over but the same was not done.

4.It is further alleged that some Share Certificates of Grasim Industries, share transfer forms and the notice for same was received by respondent No. 2 on 03.03.2004 and the respondent No. 2 was called for giving the explanation within 7 days. It is further alleged that from reading of transfer

forms, the respondent No. 2 came to know that some shares were transferred in the name of petitioner Nos. 2 & 3 by creating some forged documents. It is further alleged that in the forms, the seal and signature of Manager of ICICI Bank was also found but on verification, it was found that the Bank has not supplied such seal and accordingly, the complaint was filed with suspicion that since the petitioner No. 1 who was with the deceased as Junior might have taken these Shares and transfer Forms.

5.Mr. Dagli has further submitted that entire complaint is based upon suspicion and so far as petitioner No. 1 is concerned, in the span of about 27 years, the petitioner has served honestly and diligently with the husband of the complainant. He has further submitted that at no point of time, any grievance either from any of the clients or from deceased husband of the complainant was ever received. Mr. Dagli has further submitted that after filing of the complaint, settlement was

arrived at between the petitioner and the complainant and an affidavit was filed by the complainant on 16.07.2005. The said affidavit is annexed along with the petition at Annexure B. It is stated in the said affidavit that because of the old age, the complainant could not come to the Court. However, the said affidavit would be treated as her desire. It is further stated in the said affidavit that she has received the shares of Grasim Industries and an affidavit dated 11.07.2005 was made to this effect. It is further stated that the Shares are now in the name of the complainant and they are lying with her. With regard to files, she has stated that all the files are at the office of her husband and hence, the complaint is required to be quashed. Mr. Dagli has, therefore, submitted that in view of the settlement arrived at between the parties and in view of the affidavit produced on the record of this Court, it is not in the interest of any one to proceed with such complaint and hence, it is required to be quashed and set aside.

6.In support of his submission, Mr. Dagli has relied on the judgments in the case of *Nitinbhai Mathurdas Thakkar V/s. State of Gujarat, 2005 (2) G.L.H. 639*, and *B.S. Joshi V/s. State of Haryana & Another, [2003] 4 S.C.C. 675*. Mr. Dagli has also relied on several orders passed by this Court which are as under :-

(1) Cri. Misc. Application No. 10069 of 2003 in the case of Kirtibhai Maganlal Thakker V/s. State of Gujarat decided on 23.12.2003.

(2) Special Criminal Application No. 186 of 2004 in the case of Darpan Vishnubhai Patel V/s. State of Gujarat decided on 20.02.2004.

(3) Cri. Misc. Application No. 2978 of 2004 in the case of Vinit Subrahmaniyam Iyer V/s. State of Gujarat decided on 05.04.2004.

(4) Cri. Misc. Application No. 9495 of 2004 in the case of Vishal Shashikant Shah through his Power Of Attorney Holder and father V/s. State of Gujarat, decided on 01.12.2004.

(5) Cri. Misc. Application 11498 of 2004 in the

case of Pallaviben Shashikant Shah V/s. State of Gujarat decided on 01.03.2005.

7. Based on the aforesaid authorities, Mr. Dagli has submitted that the complaint filed by the respondent No. 2 before the Mahidarpura Police Station being CR No. I-76 of 2005 be quashed and set aside.

8. Mr. Mukesh Patel, learned Assistant Public Prosecutor appearing for the respondent No. 1 – State, on the other hand, has submitted that though the settlement was arrived at between the petitioner and the respondent No. 2, the complaint cannot be quashed as there are other serious allegations to the effect that in transfer forms, the signature of the complainant was forged and the bogus signatures and seal of ICICI Bank was affixed and signature of one Mr. Dinesh J. Gandhi was also forged and by adopting this course, false records were fabricated and thereby the accused have committed breach of trust and cheated the

complainant. So far as these allegations are concerned, the settlement arrived at between the parties would not have any bearing and since these are the non-compoundable offences, the complaint cannot be quashed even after the parties have settled their disputes. He has, therefore, submitted that the present petition is required to be dismissed. In support of his submission, he has relied on the decision of the Hon'ble Supreme Court in the case of **Inspector of Police, CBI V/s. B. Raja Gopal & Others, JT 2002 (2) SCC 331** wherein the Hon'ble Supreme Court has observed that the premature quashment made by the High Court is not in accordance with law. The Court, therefore, allowed the appeal and set aside the impugned judgment. The Hon'ble Court has further observed that whether there was any intention on the part of the accused to cheat or whether there was any act of forgery, these are the matters for the Trial Court to reach when the final conclusion is made. Even assuming that the said stand of the accused is correct, that was not enough for quashing the

criminal proceedings. Perhaps that would have been a ground for pleading mitigation at the final stage. In that case, the case involved offences under Section 420, 468 & 471 of Indian Penal Code. on the allegation that the Bank was defrauded. One of the premise adopted by the High Court was that there was a compromise between the Bank Officials and the accused and the disputed amount found due from the accused has been paid later.

9.Mr. Jashwant K. Shah, the learned advocate appearing for the respondent No. 2 has submitted that the disputes were settled between the petitioner No. 1 and the respondent No. 2 and the respondent No. 2 has no desire to prosecute with the said complaint. He has, therefore, no objection if the complaint is quashed and set aside by the Court.

10.After having heard the learned advocates appearing for the petitioner and the respondent No. 2 and the learned Assistant Public Prosecutor appearing for

the respondent No. 1 – State and after having gone through the affidavit filed by respondent No. 2 before this Court along with the petition to which learned advocate appearing for the respondent No. 2 has confirmed, the Court is of the view that the complaint is required to be quashed and set aside by exercising the powers vested in this Court under Section 482 of Cr.P.C., in view of the settlement arrived at between the parties.

11.The law is well settled by now. In the case of **B.S. Joshi V/s. State of Haryana & Another, [2003] 4 S.C.C. 675**, the Hon'ble Supreme Court has observed that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not

limit or affect the powers under Section 482 of the Cr.P.C. The Court has further observed that it is well settled that the powers under Section 482 have no limits. Of Course, whether there is more power, it becomes necessary to exercise with utmost care and caution while invoking such powers. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In that case before the Hon'ble Supreme Court, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So it would not be proper to declare the exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid

reasons including lack of bona fides.

12.Based on the aforesaid judgment of the Hon'ble Supreme Court, this Court has taken the view in the case of **Nitinbhai Mathurdas Thakkar V/s. State of Gujarat, 2005 (2) G.L.H. 639** that it is experienced that dragging of a criminal complaint even after settlement between the parties in certain class and category of offences results against the object and intention of penology and also the faith in criminal justice delivery system. So when the High Court is requested to exercise inherent powers vested with it under Section 482 of the Code of Criminal Procedure r/w. Arts. 226/227 of the Constitution of India, the High Court can categorize cases in which such powers can be exercised. It would be improper to decline to exercise powers of quashing on the ground that it would be permitting the parties to compound non-compoundable offence. Non-exercise of inherent powers to quash the proceedings to meet with the ends of justice would prevent women from settling

earlier.

13.In the above referred decisions of this Court where the complaints were quashed on the ground that settlement was arrived at between the parties, the offences punishable under Section 366 or offences punishable under Section 376, 385, 507 & 114 as well as non-compoundable offences were involved. Despite these facts, the complaints were quashed by the Court while exercising the powers under Section 482 of the Code of Criminal Procedure.

14.In view of several decisions cited by the parties, it would not be just or proper nor it would be in the interest of justice to compel the parties to face trial despite there being settlement. In the several decisions cited at the bar, such course was adopted by the High Court and the Hon'ble Supreme Court and the complaints / FIRs were quashed even though the alleged offences were not compoundable. Following these decisions and looking to the facts

of the present case, the objection raised by learned Assistant Public Prosecutor, Mr. Mukesh Patel is not found to be sustainable and accordingly, the proceedings initiated by the complainant by filing criminal Complaint before the Mahidarpura Police Station being CR No. I-76 of 2005 is hereby quashed and set aside. The petition is accordingly allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

Savariya